

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

UNITED STATES OF AMERICA

§
§
§
§
§

vs.

NO. 2:03-cr-00019-JRG-RSP

MARVIN JONES

**REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

On September 9, 2014 the Court conducted a hearing to consider the government's petition to revoke the supervised release of Defendant. The government was represented by Jim Middleton, Assistant United States Attorney for the Eastern District of Texas, and Defendant was represented by Kenneth R. Hawk.

On July 1, 2004 Defendant was sentenced before The Honorable T. John Ward of the Eastern District of Texas after pleading guilty to the offense of Possession of a Firearm in Relation to a Drug Trafficking Crime and Possession With Intent to Distribute and Distribution of Cocaine Base, a Class A felony. This offense carried a statutory maximum imprisonment term of Life. The United States Sentencing Guideline range, based on a total offense level of 29 and a criminal history category of III, was 108 to 135 months. Marvin Jones was sentenced to 168 months imprisonment followed by 4 years of supervised release, subject to the standard conditions of release, plus special conditions to include: (1) the defendant shall participate in a program of testing and treatment for drug abuse, under the guidance and direction of U.S. Probation, until such time as the defendant is released from the program by the probation officer and (2) the defendant shall provide the probation officer with access to any requested financial information for purposes of monitoring his efforts to obtain and maintain lawful employment.

On December 20, 2012 Marvin Jones completed his period of imprisonment and began service of the supervision term.

In pertinent part, under the terms of supervised release, Defendant was to refrain from excessive use of alcohol and not to purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician. In its petition, the government alleges that Defendant violated the term of supervised release when he submitted urine specimens on July 8, August 7, and August 19, 2014 that tested positive for marijuana. The defendant admitted he had used marijuana on or about July 4, August 1, August 5, and August 9, 2014.

Based on 5th Circuit case law, the Court can find that illicit drug use constitutes possession. Therefore, should the Court find by a preponderance of the evidence that Defendant violated the conditions of supervised release by possessing marijuana, Defendant will be in violation of Texas Health and Safety Code §481.121 and be guilty of committing a Grade C violation. U.S.S.G. § 7B1.3(a)(2) indicates that upon a finding of a Grade C violation, the Court may revoke a term of supervision, extend the supervision, or modify conditions of supervision. Considering Defendant's criminal history category of III, the Guideline imprisonment range for a Grade C violation is 5 to 11 months. U.S.S.G. § 7B1.4(a).

At the September 9, 2014 hearing, Defendant pled true to the allegations above. The government recommended that Defendant Marvin Jones be committed to the custody of the Bureau of Prisons for 5 months imprisonment with no supervised release to follow.

Pursuant to the Sentencing Reform Act of 1984, the Court **RECOMMENDS** that Defendant Marvin Jones be committed to the custody of the Bureau of Prisons for 5 months

imprisonment with no supervised release to follow. The Court also **RECOMMENDS** that the place of confinement be FCI Texarkana.

Defendant has waived his right to object to the findings of the Magistrate Judge in this matter so the Court will present this Report and Recommendation to U.S. District Judge Rodney Gilstrap for adoption immediately upon issuance.

So ORDERED and SIGNED this 10th day of September, 2014.



JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE